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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM ALSUP

ORACLE AMERICA, INC.,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. C 10-03561 WHA
	)	
GOGGLE, INC.,	)	
	)	SAN FRANCISCO, CALIFORNIA
DEFENDANT.	)	WEDNESDAY
	)	FEBRUARY 9, 2011
	)	11:00 O'CLOCK A.M.

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**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:**                      **MORRISON & FOERSTER LLP**  
755 PAGE MILL ROAD  
PALO ALTO, CALIFORNIA 94304-1018  
**BY: RICHARD S. BALLINGER, ESQUIRE**  
**ROMAN A. SWOOPES, ESQUIRE**  
**MARC DAVID PETERS, PH.D., PARTNER**  
**MICHAEL A. JACOBS, PARTNER**  
**DIANE C. GABL, ATTORNEY AT LAW**  
**650-251-3974**

AND

**ANDREW C. TEMKIN, CORPORATE COUNSEL**  
500 ORACLE PARKWAY  
M/S 50P7  
REDWOOD SHORES, CALIFORNIA 94065

FURTHER APPEARANCES ON NEXT PAGE.

***REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR***  
***OFFICIAL REPORTER - US DISTRICT COURT***  
***COMPUTERIZED TRANSCRIPTION BY ECLIPSE***

1 **FURTHER APPEARANCES:**

2 **ALSO FOR PLAINTIFF:**

3 **BOIES, SCHILLER & FLEXNER LLP**  
4 1999 HARRISON STREET  
5 SUITE 900  
6 OAKLAND, CALIFORNIA 94612

7 **BY: STEVEN C. HOLTZMAN, ESQUIRE**

8 **FOR THE DEFENDANT:**

9 **KING & SPALDING LLP**  
10 1185 AVENUE OF THE AMERICAS  
11 NEW YORK, NEW YORK 10036-4003

12 **BY: BRUCE W. BABER, ESQUIRE**  
13 **SCOTT T. WEINGAERTNER, ESQUIRE**

14 AND

15 **KING & SPALDING LLP**  
16 100 N. TRYON STREET  
17 SUITE 3900  
18 CHARLOTTE, NORTH CAROLINA 28202

19 **BY: STEVEN T. SNYDER, ESQUIRE**

20 AND

21 **RENNY HWANG, ASSOCIATE LITIGATION**  
22 **COUNSEL**  
23 GOOGLE  
24 1600 AMPHITHEATRE PARKWAY  
25 MOUNTAIN VIEW, CALIFORNIA 94043

1 **FEBRUARY 9, 2011**

11:00 O'CLOCK A.M.

2  
3 **P R O C E E D I N G S**

4 **THE CLERK:** FOR THE RECORD, CALLING CASE 10-3561.  
5 IT'S ORACLE AMERICA, INC. VERSUS GOOGLE, INC., ON FOR MOTION TO  
6 COMPEL.

7 COUNSEL, CAN YOU PLEASE STATE YOUR APPEARANCES FOR  
8 THE RECORD?

9 **MR. JACOBS:** YES. FOR PLAINTIFF ORACLE AMERICA,  
10 MICHAEL JACOBS, MARK PETERS, SEVERAL COLLEAGUES, YOUNGER  
11 COLLEAGUES IN THE BACK FROM MORRISON & FOERSTER AND STEVE  
12 HOLTZMAN FROM BOIES SCHILLER & FLEXNER.

13 **THE COURT:** ALL RIGHT.

14 **MR. WEINGAERTNER:** GOOD MORNING, YOUR HONOR. SCOTT  
15 WEINGAERTNER OF KING & SPALDING FOR DEFENDANT GOOGLE. HERE WITH  
16 BRUCE BABER, KING & SPALDING, RANDY HWANG OF GOOGLE AND STEVE  
17 SNYDER ALSO FROM KING & SPALDING.

18 **MR. JACOBS:** AND I SHOULD HAVE INTRODUCED ANDREW  
19 TEMKIN FROM ORACLE, SIR.

20 **THE COURT:** WELCOME TO YOU, TOO.

21 WE'RE HERE FOR A COUPLE OF THINGS. I WOULD LIKE TO  
22 START WITH THE ISSUE OF WHETHER OR NOT THE DISCLOSURES ARE  
23 ADEQUATE UNDER OUR LOCAL RULES, UNLESS YOU'VE REACHED AN  
24 AGREEMENT.

25 **MR. JACOBS:** WE DID, YOUR HONOR. IT MAY NOT SURPRISE

1 YOU GETTING US IN THE ROOM TOGETHER WAS PRODUCTIVE.

2 **THE COURT:** WELL, THEN, LET'S HEAR THE AGREEMENT.

3 **MR. JACOBS:** THE AGREEMENT IS THAT BY FEBRUARY 18TH  
4 BOTH SIDES WILL FURTHER SUPPLEMENT THEIR INFRINGEMENT  
5 CONTENTIONS AND NONINFRINGEMENT CONTENTIONS WITH RESPECT TO THE  
6 CONCERN THE OTHER SIDE RAISED.

7 TO GO DOWN A LEVEL OF DETAIL, WE HAVE EXPRESSED A  
8 CONCERN WITH THE LEVEL OF TECHNICAL DETAIL IN GOGGLE'S  
9 NONINFRINGEMENT CONTENTIONS. WHY IS THIS LIMITATION NOT PRESENT  
10 IN THE SOURCE CODE WHERE IN THE INFRINGEMENT CONTENTIONS WE'VE  
11 DELINEATED THE SOURCE CODE WHERE THAT LIMITATION CAN BE FOUND?

12 GOGGLE HAS AGREED TO GIVE IT THEIR BEST CURRENT SHOT  
13 AT ARTICULATING WHY THAT LIMITATION IS NOT PRESENT IN THAT CODE  
14 ITSELF, ON THE ASSUMPTION THAT THAT CODE IS OPERATING ON THE  
15 HANDSETS.

16 RECIPROCALLY GOOGLE EXPRESSED A CONCERN THAT WE HAD  
17 NOT ARTICULATED SUFFICIENTLY THE BASIS FOR OUR BELIEF THAT THE  
18 GOOGLE -- THAT THE ANDROID CODE THAT IS ON THE GOOGLE PUBLIC  
19 ANDROID WEBSITE IS, IN FACT, THE CODE THAT IS PRESENT ON THE  
20 HANDSETS THAT WOULD REPRESENT THE DIRECT INFRINGEMENT IN CASES  
21 OF INDIRECT INFRINGEMENT.

22 SO BY FEBRUARY 18TH, WE WILL BOTH BE SUPPLEMENTING  
23 AND GIVING IT OUR BEST CURRENT SHOT WITH RESPECT TO THE OTHER  
24 SIDE'S CONCERNS.

25 WE FURTHER AGREED THAT WE WILL DO ANOTHER UPDATE OF

1 OUR CONTENTIONS AMPLIFYING ON EVIDENCE THAT HAS BEEN DEVELOPED  
2 IN THE INTERIM ON APRIL 1ST.

3 SO I THINK WE'RE BOTH SATISFIED THAT WE'VE MADE A LOT  
4 OF PROGRESS HERE, AT LEAST, AND DON'T NEED THE COURT'S  
5 INTERVENTION AT THIS TIME ON THAT, ON THE ISSUE OF OUR  
6 INFRINGEMENT CONTENTIONS AND THEIR NONINFRINGEMENT CONTENTIONS.

7 **THE COURT:** SO PROPERLY STATED?

8 **MR. WEINGAERTNER:** YES, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. WELL, GOOD. THANK YOU FOR  
10 MAKING THAT AGREEMENT. I APPRECIATE IT.

11 IS THERE ANYTHING MORE I CAN DO FOR YOU TODAY?

12 **MR. JACOBS:** WE HAD FURTHER BRIEFED CONCERNS WITH  
13 EACH OTHER'S INTERROGATORY RESPONSES. WE HAD ENOUGH TIME TO  
14 DISCUSS TWO OF THOSE, ONE IMPORTANT ONE, ONE THAT WAS IMPORTANT  
15 TO EACH SIDE. AND WE MADE ENOUGH PROGRESS IN RESOLVING THOSE  
16 THAT WE DON'T THINK WE NEED THE COURT'S INTERVENTION ON  
17 INTERROGATORIES AT THIS TIME.

18 WE BOTH AGREED THAT WHAT WE REALLY NEED TO BE DOING  
19 IS ENGAGING BETTER WITH EACH OTHER IN ATTEMPTING TO RESOLVE  
20 THESE DISAGREEMENTS AND EXPLAINING WHAT IS REALLY BOTHERING THE  
21 OTHER SIDE AND NOT ASKING THE COURT TO CALL THESE BALLS AND  
22 STRIKES AT THIS POINT.

23 **THE COURT:** AGREED?

24 **MR. WEINGAERTNER:** YES, YOUR HONOR. WE'RE IN  
25 AGREEMENT WITH THAT.

1                   **THE COURT:** ALL RIGHT. SO DOES THAT TAKE CARE OF  
2 EVERYTHING THAT WAS TEED UP FOR TODAY?

3                   **MR. JACOBS:** IT DOES, YOUR HONOR.

4                   **MR. WEINGAERTNER:** YES, YOUR HONOR.

5                   **THE COURT:** HAVE YOU TAKEN ANY DEPOSITIONS IN THIS  
6 CASE?

7                   **MR. JACOBS:** NOT YET, YOUR HONOR.

8                   **THE COURT:** WELL, DON'T WE HAVE A DISCOVERY CUTOFF  
9 COMING UP SOON? RIGHT? NOT SOON, BUT LOOKS LIKE IT WILL BE  
10 JULY 29 OF THIS YEAR.

11                   YOU KNOW I WILL NOT EXTEND IT.

12                   **MR. WEINGAERTNER:** YES, YOUR HONOR.

13                   **MR. JACOBS:** WE KNOW, YOUR HONOR.

14                   **THE COURT:** SO YOU BETTER GET CRACKING. I KNOW WHAT  
15 WILL HAPPEN. THERE WILL BE GNASHING OF TEETH. AND THEN, YOU'LL  
16 BLAME ME, SAY HOW UNREASONABLE THAT JUDGE IS.

17                   **MR. JACOBS:** WOULDN'T THINK OF IT, YOUR HONOR.

18                   **THE COURT:** BUT, YOU KNOW, IT'S YOUR OWN FAULT. YOU  
19 NEED TO GET CRACKING.

20                   PLEASE DON'T GO FOR THE  
21 WE-GOT-TO-KNOW-EVERYTHING-TILL-WE-DO-ANYTHING APPROACH. I KNOW  
22 BOTH. I KNOW THIS IS THE WAY IT IS. YOU'LL SAY:

23                   "WE CAN'T TAKE A SINGLE DEPOSITION UNTIL WE KNOW  
24 EVERY SINGLE DOCUMENT."

25                   NO. TAKE THE DEPOSITIONS WITH 80 PERCENT OF THE

1 DOCUMENTS AND THE 20 PERCENT, IF THEY MATTER, WELL, TAKE THEM  
2 AGAIN. AND MAKE THE OTHER SIDE PAY FOR THE COST OF THE  
3 DEPOSITION IF THEY STONEWALLED.

4 BUT I LIKE TO SEE THE CASE MOVING ALONG. DEPOSITIONS,  
5 THAT'S WHERE YOU WILL FIND A LOT OF THE INFORMATION. PLUS, I  
6 AGREE THE DOCUMENTS USUALLY TELL THE STORY, TOO.

7 **MR. JACOBS:** WE WILL TAKE THAT TO HEART, YOUR HONOR.

8 **THE COURT:** HOW ABOUT E-MAILS? HAVE THEY BEEN  
9 PRODUCED YET?

10 **MR. JACOBS:** YES, YOUR HONOR. BOTH SIDES HAVE MADE  
11 CONSIDERABLE ELECTRONIC AND NONELECTRONIC PRODUCTIONS. WE WERE  
12 TOLD TODAY WE PRODUCED A TERABYTE. WE DIDN'T REALIZE THAT.

13 **THE COURT:** WHAT'S THAT?

14 **MR. JACOBS:** A LOT.

15 **THE COURT:** WHAT IS A TERABYTE?

16 **MR. JACOBS:** A TERABYTE IS A --

17 **THE COURT:** IS THAT MORE THAN A BILLION?

18 **MR. JACOBS:** A TERABYTE IS A --

19 **THE COURT:** A MILLION MILLION?

20 NO, THAT WOULDN'T -- I DON'T KNOW WHAT IT WOULD BE.  
21 THAT'S VERY LARGE.

22 **MR. JACOBS:** IT'S VERY LARGE.

23 **THE COURT:** HOW TO COULD ANYONE READ ALL THAT  
24 INFORMATION?

25 **MR. WEINGAERTNER:** THAT'S WHAT WE WERE WONDERING,

1 YOUR HONOR.

2 **THE COURT:** WHAT?

3 **MR. WEINGAERTNER:** THAT'S WHAT WE WERE WONDERING,  
4 YOUR HONOR. WE HAD A DISCUSSION ABOUT THAT.

5 **THE COURT:** CAN I ASK YOU A QUESTION ABOUT THIS CASE?  
6 MAYBE I SHOULDN'T.

7 **MR. JACOBS:** NO, GO AHEAD.

8 **THE COURT:** I'M JUST WONDERING ABOUT THE THEORY  
9 SINCE -- I DON'T KNOW ENOUGH ABOUT THIS TO SAY, BUT SOME PEOPLE  
10 WOULD HAVE THOUGHT THAT JAVA WAS IN THE PUBLIC DOMAIN AND THAT  
11 NOBODY OWNED IT, BECAUSE MANY PEOPLE HAVE BEEN HEARING ABOUT  
12 JAVA FOR 30 YEARS, SO HOW COULD ANYBODY OWN IT?

13 **MR. JACOBS:** WELL, IT DEPENDS ON WHAT "IT" IS, YOUR  
14 HONOR.

15 **THE COURT:** ALL RIGHT.

16 **MR. JACOBS:** SO, FOR EXAMPLE, THE JAVA PROGRAMMING  
17 LANGUAGE, WE'RE NOT ASSERTING THAT WE OWN THAT PROGRAMMING  
18 LANGUAGE FOR PURPOSES OF THIS CASE. BUT WE ARE ASSERTING,  
19 OBVIOUSLY, WITH RESPECT TO THE PATENTS THAT WE HAVE PATENT  
20 RIGHTS.

21 WE WERE JUST TALKING ABOUT --

22 **THE COURT:** PATENT RIGHTS ON WHAT?

23 **MR. JACOBS:** ON PATENTS THAT HAPPEN TO HAVE ARISEN  
24 FROM THE INNOVATIONS ASSOCIATED WITH JAVA.

25 **THE COURT:** HOW IS THAT DIFFERENT FROM JUST USING THE



1 JAVA CODE ITSELF?

2 **MR. JACOBS:** WELL, THE JAVA CODE -- SO THE JAVA CODE  
3 ITSELF IS NOT IN THE PUBLIC DOMAIN. THE JAVA CODE ITSELF IS  
4 LICENSED UNDER OPEN SOURCE LICENSES THAT HAVE THEIR OWN BENEFITS  
5 TO ORACLE AND TO THE OPEN SOURCE COMMUNITY.

6 GOOGLE HAS NOT AVAILED ITSELF OF THOSE OPEN SOURCE  
7 LICENSES. IT CHOSE A DIFFERENT LICENSING PATH WITH ANDROID,  
8 SO --

9 **THE COURT:** SEE, I DON'T KNOW ENOUGH ABOUT WHAT THAT  
10 "OPEN SOURCE" MEANS, SO I HAVE A FEELING I SHOULD PROBABLY JUST  
11 LET IT LIE. BUT SINCE I LET YOU HAVE A MOMENT, LET'S HEAR FROM  
12 THE OTHER SIDE, SO YOU HAVE EQUAL TIME.

13 **MR. WEINGAERTNER:** WELL, THANK YOU, YOUR HONOR.

14 WE'RE ACTUALLY GLAD TO HEAR MR. JACOBS, I BELIEVE,  
15 TAKE THE POSITION THAT THE JAVA LANGUAGE WASN'T PROTECTED,  
16 BECAUSE I THINK THERE WAS AN OPEN ISSUE ABOUT THAT.

17 WE WERE ACTUALLY UNDER THE IMPRESSION THAT THEY WERE  
18 TAKING THAT POSITION. WE'RE ACTUALLY TRYING TO SORT OUT EXACTLY  
19 WHAT THEIR POSITIONS ARE, AND WE'RE GLAD THAT YOUR HONOR RAISED  
20 THIS ISSUE, BECAUSE "JAVA" IS A TERM THAT IS USED EXTREMELY  
21 BROADLY IN THIS CASE TO COVER LANGUAGE, TO COVER PLATFORM.

22 AND I THINK THEY WANT IT TO COVER PATENTS, ALTHOUGH I  
23 THINK WE'RE ON THE SAME PAGE AS YOUR HONOR THAT THEY ARE --

24 **THE COURT:** I'M NOT ON ANY PAGE. PLEASE DON'T SAY  
25 THAT. DON'T SAY THAT. I DON'T KNOW ENOUGH ABOUT THIS TO BE ON

1 ANY PAGE. SO I JUST ASKED THE QUESTION.

2 **MR. WEINGAERTNER:** OKAY. LET ME REPHRASE THAT.

3 WE'RE ALSO NOT ON THE SAME PAGE AS YOUR HONOR.

4 **THE COURT:** ALL RIGHT. AT LEAST YOU ASKED THE SAME  
5 QUESTION. ALL RIGHT.

6 ALL RIGHT. SO I NEED TO ALERT YOU ALL WHILE I GOT YOU  
7 HERE THAT STARTING MARCH 7TH -- DID I SEND OUT SOMETHING ON THIS  
8 ALREADY?

9 **MR. JACOBS:** I DON'T --

10 **THE COURT:** ALL RIGHT. STARTING MARCH 7TH I WILL BE  
11 IN A LARGE GANG CASE THAT WILL -- CRIMINAL PROSECUTION -- THAT  
12 WILL PROBABLY GO SIX MONTHS, FOUR MONTHS, SIX MONTHS, SOMEWHERE  
13 IN THERE.

14 SO IF YOU ARE GOING TO FILE ANY MOTIONS, I MAY HAVE  
15 TO ASK YOU TO DO A PROCEDURE WHEREBY YOU CAN'T FILE ANY MOTIONS  
16 UNLESS YOU GET PERMISSION IN ADVANCE.

17 SO LET ME ASK YOU: DO EITHER OF YOU HAVE MOTIONS  
18 THAT YOU ARE CONTEMPLATING? IF YOU DO, I MIGHT AS WELL DEAL  
19 WITH IT RIGHT NOW.

20 **MR. BABER:** AGAIN, YOUR HONOR, IF I MAY.

21 **THE COURT:** SURE. COME ON UP.

22 **MR. BABER:** YES. BRUCE BABER FROM KING & SPALDING.

23 WE ARE CONTEMPLATING AN EARLY MOTION FOR SUMMARY  
24 JUDGMENT ON THE COPYRIGHT COUNT. THERE'S SEVEN PATENTS ASSERTED  
25 AND TWO COPYRIGHTS, AND WE BELIEVE THAT THE COPYRIGHT CLAIM

1 SHOULD FAIL, AND WE ARE PREPARING AN EARLY MOTION ON THAT.

2 **THE COURT:** IS THIS SOMETHING THAT COULD BE EASILY  
3 CURED BY PLEADING AROUND THE PROBLEM?

4 **MR. BABER:** NO, YOUR HONOR. IT HAS NOTHING TO DO  
5 WITH THE PLEADING. IT HAS TO DO WITH THE SUBSTANCE OF THE  
6 CLAIM. I'M HAPPY TO GO INTO IT IN AS MUCH DETAIL AS YOU LIKE.  
7 WE THINK IT'S SOMETHING THAT CAN'T BE CURED. IT'S JUST THAT --  
8 IN FACT, IT RELATES TO ONE OF THE ISSUES YOU JUST RAISED, WHICH  
9 IS THE "JAVA PROGRAMMING LANGUAGE," AS YOU PUT IT, THERE ARE  
10 CERTAIN PIECES OF THE ANDROID THAT ARE THERE SO THAT PROGRAMS  
11 WRITTEN IN THE JAVA LANGUAGE WILL RUN RIGHT.

12 THAT'S THESE API'S. OKAY? SO THAT --

13 **THE COURT:** WHAT IS AN API?

14 **MR. BABER:** IT'S AN APPLICATION PROGRAMMING  
15 INTERFACE, WHICH BASICALLY ALLOWS ONE COMPUTER SOFTWARE PROGRAM  
16 TO SAY TO ANOTHER ONE:

17 "DO THIS FOR ME."

18 OKAY? IT MAKES A CALL, AND IT ASKS THE OTHER PROGRAM  
19 TO PERFORM A FUNCTION.

20 AND IN JAVA PROGRAMMING LANGUAGE IT HAS THESE  
21 COMMANDS. IT SAYS:

22 "GO ASK THIS TO DO THAT. GO ASK THIS OTHER  
23 THING TO DO SOMETHING ELSE."

24 AND THOSE, THERE ARE SOME PIECES OF THOSE KINDS OF  
25 JAVA API'S THAT ARE IN THE ANDROID THAT ARE THERE SO THAT

1 PROGRAMS IN THE JAVA LANGUAGE WILL RUN CORRECTLY. AND THAT'S  
2 WHAT THEY BASE THE COPYRIGHT INFRINGEMENT CLAIM ON, PRIMARILY.

3 **THE COURT:** IS THIS A SUMMARY JUDGMENT MOTION?

4 **MR. BABER:** YES, YOUR HONOR, IT IS.

5 **THE COURT:** WELL, HERE'S WHAT YOU OUGHT TO DO. DON'T  
6 FILE THAT YET. FILE A THREE-PAGE PRECIS, P-R-E-C-I-S.

7 AND IF IT'S -- I WON'T SAY -- I WILL IF IT'S GOT  
8 ENOUGH PLAUSIBILITY THAT I THINK I CAN WORK IT IN. I WON'T SAY  
9 THAT -- THAT DOESN'T MEAN IT WILL BE GRANTED. IT JUST MEANS IT'S  
10 IN THE BALLPARK OF PLAUSIBILITY, THEN WE WILL SET A SCHEDULE FOR  
11 THAT.

12 BUT I NEED TO IMPOSE SOME KIND OF -- SOME KIND OF WAY  
13 TO PROTECT MYSELF AGAINST HAVING TOO MUCH MOTION PRACTICE, AT  
14 LEAST FOR THE NEXT FEW MONTHS.

15 I'M ALREADY WITHIN 30 DAYS OF THIS TRIAL, AND IT'S  
16 NOT GOING TO GO AWAY. IT'S A MAJOR PROBLEM, A MAJOR TIME  
17 COMMITMENT.

18 SO ALL RIGHT. SO CAN YOU DO A THREE-PAGE LETTER?

19 AND THEN, MR. JACOBS, YOU CAN FILE A THREE-PAGE -- NO  
20 ATTACHMENTS. LOOK AT THIS (INDICATING). I ASKED FOR -- LOOK AT  
21 THIS (INDICATING). I ASKED FOR A THREE-PAGE THING. AND THIS IS  
22 WHAT MORRISON & FOERSTER GAVE ME WITH FOUR INCHES.

23 JUST THREE PAGES, NO ATTACHMENTS. NO -- NOTHING BUT  
24 JUST SUMMARY. AND THEN, I CAN TELL WHETHER OR NOT THERE'S  
25 ENOUGH PLAUSIBILITY. AND ALSO WHY IT OUGHT TO BE HEARD NOW AS

1 OPPOSED TO LATER.

2 AND THEN, IF IT'S -- I'M GOING ERR ON THE SIDE OF  
3 LETTING YOU BRING IT. BUT I GOT TO DO SOMETHING TO PROTECT MY  
4 RESOURCES AGAINST BEING OVERSTRETCHED.

5 HOW ABOUT YOU, MR. JACOBS? DO YOU HAVE ANY MOTIONS  
6 YOU WANT TO BRING?

7 **MR. JACOBS:** WE DON'T HAVE ANY EARLY MOTIONS  
8 CONTEMPLATED, YOUR HONOR.

9 TWO POINTS OF CLARIFICATION. WE DO HAVE TWO DATES  
10 FOR A MARKMAN IN APRIL.

11 **THE COURT:** WE'RE GOING TO GO AHEAD WITH THAT. I'M  
12 STILL COUNTING ON DOING THAT.

13 **MR. JACOBS:** AND THEN, IF WE DO HAVE DISCOVERY ISSUES  
14 AS OPPOSED TO SUBSTANTIVE MOTIONS --

15 **THE COURT:** YES, YOU CAN STILL BRING THOSE.

16 **MR. JACOBS:** THANK YOU.

17 **THE COURT:** YOU CAN BRING THOSE. BUT IF IT GETS OUT  
18 OF HAND -- IT HASN'T YET. BUT IF IT GOT OUT OF HAND, I WOULD  
19 HAVE TO ASK A MAGISTRATE JUDGE TO HELP ME WITH THAT. BUT I WAS  
20 GOING TO TRY TO WORK THROUGH THE ONES YOU HAD TODAY.

21 AND, YOU KNOW, IT'S OKAY TO HAVE SOME DISCOVERY  
22 DISPUTES. AND I VERY MUCH APPRECIATE YOU RESOLVING THESE. BUT IN  
23 SOME CASES THE LAWYERS FIGHT OVER SO MANY THINGS I JUST CANNOT  
24 DO IT ALL, AND I HAVE TO GET A MAGISTRATE JUDGE TO HELP ME.

25 BUT YOU DID GOOD TODAY. YOU SAVED YOUR SILVER BULLETS

1 FOR A TIME WHEN BOTH SIDES PROBABLY NEED IT MORE. SO GOOD FOR  
2 YOU.

3 WELL, WHAT ELSE CAN I DO FOR YOU NOW THAT YOU ARE  
4 HERE, OR CAN WE JUST BRING THIS TO AN END?

5 **MR. JACOBS:** I THINK WE'RE DONE, YOUR HONOR. THANK  
6 YOU.

7 **MR. WEINGAERTNER:** WE'RE DONE, YOUR HONOR.

8 **THE COURT:** YOU CAME ALL THE WAY -- WHERE ARE YOU  
9 LOCATED?

10 **MR. WEINGAERTNER:** NEW YORK.

11 **MR. BABER:** NEW YORK.

12 **THE COURT:** ALL FOUR OF YOU ARE IN NEW YORK?

13 **MR. BABER:** NO. MR. SNYDER IS IN CHARLOTTE, NORTH  
14 CAROLINA.

15 MR. HWANG IS DOWN IN MOUNTAIN VIEW AT GOOGLE.

16 AND I ACTUALLY SPLIT MY TIME BETWEEN ATLANTA AND NEW  
17 YORK.

18 **THE COURT:** SO DO WE HAVE A REPRESENTATIVE OF BOTH  
19 GOOGLE HERE AS WELL AS ORACLE?

20 **MR. WEINGAERTNER:** YES, YOUR HONOR.

21 **THE COURT:** SO DID YOU BOTH GET TO SEE THE JURY ROOM?

22 **MR. HWANG:** YOUR HONOR, I DID. THANK YOU FOR YOUR  
23 HOSPITALITY.

24 **THE COURT:** AND YOU, AS WELL?

25 **MR. TEMKIN:** YOUR HONOR, I DID NOT GET TO SEE THE

1 JURY ROOM. I WAS ATTENDING A HEARING.

2 **THE COURT:** WELL, I'M GOING TO LET MR. JACOBS TAKE  
3 YOU BACK THERE, BECAUSE I WANT YOU TO SEE WHERE THE FATE OF YOUR  
4 COMPANIES WILL BE DECIDED.

5 **MR. TEMKIN:** THANK YOU VERY MUCH, YOUR HONOR.

6 **THE COURT:** AND I DO THIS BECAUSE I THINK LAWYERS  
7 SOMETIMES THINK:

8 "WELL, THIS IS GOING TO GO STRAIGHT FROM THAT  
9 LECTERN TO THE FEDERAL CIRCUIT."

10 NO. THERE'S AN IMPORTANT INTERMEDIATE STOP IN THERE,  
11 IN THAT ROOM, WHERE YOU NEVER KNOW WHO IS GOING TO BE -- BUT I  
12 HAVE GREAT FAITH IN OUR JURY SYSTEM. BUT IT'S JUST PEOPLE,  
13 ORDINARY PEOPLE WHO HAVE LIVES TO LEAD AND CHILDREN TO GET TO  
14 SCHOOL IN THE MORNING. AND THEY DRIVE IN HERE. THEY LISTEN TO  
15 THE EVIDENCE. THEY GO IN THERE AND DECIDE YOUR CASE.

16 AND EVERYTHING, YOU KNOW. SO IT SOMETIMES DRIVES  
17 THAT POINT HOME FOR YOU TO SEE THE JURY ROOM.

18 SO, MR. JACOBS, I WANT YOU TO STAY BACK LONG ENOUGH  
19 TO SHOW YOUR CLIENT THE JURY ROOM. IT'S A NICE JURY ROOM, BUT  
20 THAT'S WHERE -- THAT'S THE INTERMEDIATE STOP BETWEEN HERE AND  
21 THE FEDERAL CIRCUIT.

22 AND WHAT THEY DECIDE IS NOT REVIEWABLE, UNLESS THERE  
23 IS INSUFFICIENT EVIDENCE. SO YOU HAVE TO GET ME TO MAKE A  
24 MISTAKE. THAT'S REVIEWABLE, BUT MISTAKES BY THE JURY ARE VERY  
25 HARD TO REVERSE.

1 ALL RIGHT. I THANK YOU BOTH. IT'S GREAT TO HAVE SUCH  
2 TERRIFIC LAWYERS HERE IN THE COURTROOM. AND HAVE A GREAT DAY.  
3 THANK YOU.

4 MR. JACOBS: THANK YOU, YOUR HONOR.

5 MR. WEINGAERTNER: THANK YOU, YOUR HONOR.

6 (THEREUPON, THIS HEARING WAS CONCLUDED.)  
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## 1 CERTIFICATE OF REPORTER

2 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY  
3 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED  
4 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO  
5 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE  
6 RECORD OF SAID PROCEEDINGS.

7 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR  
8 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING  
9 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE  
10 OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

11 THE FEE CHARGED AND THE PAGE FORMAT FOR THE  
12 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL  
13 CONFERENCE.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS  
15 10TH DAY OF FEBRUARY, 2011.

16  
17  
18  
19 \_\_\_\_\_  
20 /S/ KATHERINE WYATT  
21  
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